IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

WP.No.49775/2006
MP.No.1/2006 & 1/2007

R.Shenraj Petitioner

vs.

1.Chennai Metropolitan Development Authority
by Member Secretary, Chennai-8

2.Corporation of Madras by its Commissioner
Chennai-3

3.The Assistant Engineer
Corporation of Chennai Division
5, Chennai-94

4.The Divisional Engineer
Corporation of Chennai Division
5, Chennai-94 Respondents

Prayer:- This Writ Petition is filed under Art.226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd Respondent in his order dated 14.12.2006 and to quash the same and to consequently to direct the 2nd Respondent to permit the Petitioner Association to maintain the Open Space Reservation Area as park/play field for the exclusive use of the Chitra Avenue Flat owners.

For Petitioner : Mr.Gladys Daniel
For Respondents: Mr.J.Ravindran, R1
Mr.V.Bharathidasan-RR2to4

ORDER

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1.The case of the Petitioner is that the Petitioner is the Chitra Flats and Apartments Owners Association, bearing Registration No.205/2002; that there are around 350 flats in the Avenue and around 1500 inmates are living there, which is exclusive of the expected occupants in the unsold flats and some of the flats were purchased as early as 1999; that at the time of occupation, the members of the Petitioner Association found that the particular area adjacent to the Nungampakkam Railway Station was kept vacant, which resulted in anti social elements trespassing into the said land and causing public nuisance; that the Petitioner association decided to prevent such trespass and nuisance and made enquiries for ascertaining the status

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of the land; that thereafter they came to known that the said land was earmarked as Open Space Reservation Land (OSR), which has been gifted to the 2nd Respondent by virtue of the registered gift deed dated 26.6.2000 registered as Doc.No.2206/2000 with the Sub Registrar, Kodambakkam; that the gift was made as required under Clause 19(B)iv of the Development Control Rules of Chennai Metropolitan Development Authority; that the Petitioner made several oral and written representations to the Respondents, requesting for proper utilisation and maintenance of the said OSR Land, but they failed to response and hence, they mobilised funds among themselves and developed a small park and garden for protecting the residents from the ill effects of urbanisation; that the said park and garden have been under the exclusive maintenance of the flat owners for the past several years; that while things are as such, the 2nd Respondent attempted to obstruct the residents from using the said OSR land; that on 18.4.2002 some of the officials of the 2nd Respondent started putting up obstruction with an ulterior motive of converting the said recreational area for the betterment of some influential third parties; that the Petitioner has filed WP.No.14264/2002 to issue a Writ of Mandamus to direct the 2nd Respondent therein to pass orders on the representation of the Petitioner dated 10.8.2001 to earmark the said land for reserved area and consequently to maintain the same; that in WPMP.NO.19229/2002 in WP.No.14264/2002, interim injunction was granted as sought by the Petitioner by order dated 25.4.2002, which was made absolute on 29.8.2003 and the said Writ Petition was ultimately disposed of on 18.9.206, directing the Respondent Corporation to decide as to whether the open space should be given for the purpose of usage by the flat owners in question; that thereafter, the Respondent Corporation has passed the impugned order dated 14.12.2006, directing the Petitioner association to remove all the play equipment and hand over possession of the said OSR Land to the Corporation and hence, this Writ Petition has been filed.

2. The case of the Respondents is that admittedly the land in question was donated to the Respondent Corporation and hence, they have every right over the said land and possession was not handed over by the Petitioner and hence, they could not develop the park and garden and for that purpose, the Respondents rightly passed the impugned order, directing the Petitioner Association to remove the obstructions and hand over possession of the same.

3. The learned counsel for the Petitioner has submitted that the impugned order passed by the Respondent is arbitrary, besides that it is a non speaking order; that the Respondents did not conduct proper enquiry by giving opportunity to the Petitioner Association and the Petitioner is not causing any obstruction as alleged by the Respondent Corporation; that GO.Ms.No.165 dated 10.9.1997 issued by the Housing and Urban Development Department permitted the residents association to maintain reserved areas as parks/gardens and hence, the Petitioner by spending huge amount developed the park and garden and hence, it is not proper on the part of the Respondent Corporation to direct the Petitioner to remove the playing equipments and hand over possession of the land in dispute and hence, the Petitioner is entitled to maintain the park and garden in which the Respondent Corporation has no right at all and

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prayed for quashing of the impugned order.

4. The learned standing counsel for the 2nd Respondent has submitted that the land in dispute is to an extent of 1270 sq.ft. in Paimash No.297 and 650 in TS.No.189 part in Block No.16, Pulliyur Village, Egmore-Nungambakkam Taluk, Chennai District; that the said land was originally belonged to the Loyola College and the same was gifted to the Chennai Corporation for Open Space Reservation by way of gift deed dated 26.6.2000 by their Power of Attorney G.Govindarajan; that the said land was gifted for utilising the same and maintain for the benefit of the public by the Corporation; that at that time, the said G.Govindarajan has given an undertaking to the Corporation that he would put up a compound wall around the land within 6 months from the date of handing over the possession, but he failed to comply with the said undertaking and on the other hand, he encroached the land and unauthorisedly erected children play apparatus; that subsequently one G.Manjula, w/o. G.Govindarajan filed the said Writ Petition in WP.No.14264/2002 and obtained interim injunction restraining the Respondent Corporation from entering into the OSR Area and not to disturb their enjoyment of the land in dispute; that subsequently the said Writ Petition was disposed of by order dated 18.9.2006, directing the Respondent Corporation to take decision one way or the other; that after considering the objections of the Petitioner, it was decided by the Corporation to take over the land for further development of the land as a park and play ground for the use of the general public including the residents of the Petitioner Association; that OSR land is meant for the use of General Public and it cannot be allotted to the Petitioner exclusively and final order was passed on 14.12.2006 and the same was also communicated to the Petitioner; that by virtue of the interim order granted by this court, the resident occupied the OSR land using the part of the land as children play space with playing apparatus and the remaining area as a parking area for two wheelers and four wheelers of the resident, which is not permissible and hence impugned order has rightly been passed by the Respondent Corporation and prayed for dismissal of this Writ Petition.

5. This court carefully considered the arguments of the learned counsel on either side and also perused the material records placed.

6. It is not in dispute that the land in question, which is the subject matter of this Writ Petition, was donated in favour of the Respondent Corporation for OSR. It is seen from the records that the Respondent Corporation has not immediately made any efforts to develop park/garden. However, it is alleged by the Corporation that said G.Govindarajan, who was the power of attorney of Loyola College, promised to put up a compound wall within 6 months from the date of execution of the said gift deed, but he failed to do so, as a result of which, the Respondent Corporation is unable to commence the work and the said reason assigned by the Respondent Corporation is not convincing, however which cannot be ignored because the delay caused by the donor in constructing the compound wall definitely could have made the Corporation to postpone the planning and implementation, which is normal nowadays. Having waited for a long time, as there was no action taken by the Respondent Corporation, the Petitioner Association has bona fide developed the park and maintaining it as on

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date. However, such a development and maintaining of the park will not confer any right to the Petitioner, since the said land was admittedly gifted to the Respondent Corporation for OSR. Now, the learned standing counsel for the Respondent Corporation, on instructions, has submitted that the Respondent Corporation is taking steps to develop the land for park/garden within a short period.

7. Considering the said facts that the land in dispute was gifted to the Respondent Corporation and that the Respondent Corporation has now taken a decision to develop the park within a short period and the same is reflected in the impugned order, this court is of the considered view that the prayer as sought for in this Writ Petition cannot be granted.

8. In the result, this Writ Petition is dismissed. No costs. Consequently, the connected MPs are closed. However, it is made clear that along with the other general public, the members of the Petitioner Association are also entitled to use the park and the garden.

9. After dictating of this order, the learned counsel for the Petitioner has prayed this court to direct the Respondent Corporation not to remove the play apparatus from the land in dispute, for which, the learned standing counsel for the Respondent Corporation has submitted that if the said play apparatus are required for the park, the same will be used and that in case there is any hindrance for development activities, the same has to be removed and the said submissions of the learned standing counsel for the Respondent Corporation is recorded.

Srcm

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1. Chennai Metropolitan Development Authority
   by Member Secretary, Chennai-8

2. Corporation of Madras by its Commissioner
   Chennai-3

3. The Assistant Engineer
   Corporation of Chennai Division
   5, Chennai-94

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4.The Divisional Engineer
Corporation of Chennai Division
5, Chennai-94
+ One cc to Mr. Gladys Daniel Advocate sR 20971
+ One cc to Mr. V. Bharathidasan Advocate sR 21313
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